

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference JWJ01162WO	FOR FURTHER ACTION  See Form PCT/IPEA416	
International application No. PCT/EP2004/011228	International filing date (day/month/year) 07.10.2004	Priority date (day/month/year) 09.10.2003
International Patent Classification (IPC) or national classification and IPC A61K31/426, A61P17/06, A61P17/00		
Applicant SINCLAIR PHARMACEUTICALS LIMITED et al.		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
  - a.  *(sent to the applicant and to the International Bureau)* a total of 1 sheets, as follows:
    - sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
    - sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
  - b.  *(sent to the International Bureau only)* a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

Date of submission of the demand 05.08.2005	Date of completion of this report 12.01.2006
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Albayrak, T  Telephone No. +49 89 2399-7549



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10/575023

INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY

International application No.  
PCT/EP2004/011228

IAP20 Rec'd PCT/PTO 07 APR 2006

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
    - international search (under Rules 12.3 and 23.1(b))
    - publication of the international application (under Rule 12.4)
    - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

Description, Pages

1-18 as originally filed

Claims, Numbers

1-17 as originally filed  
18-20 received on 04.08.2005 with letter of 04.08.2005

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
- 3.  The amendments have resulted in the cancellation of:
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):
- 4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/011228

**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- the entire international application,  
 claims Nos. 13-15

because:

- the said international application, or the said claims Nos. 13-15 (industrial applicability) relate to the following subject matter which does not require an international preliminary examination (specify):

**see separate sheet**

- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):  
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.  
 no international search report has been established for the said claims Nos.  
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

- has not been furnished  
 does not comply with the standard

the computer readable form

- has not been furnished  
 does not comply with the standard

- the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

- See separate sheet for further details

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**INTERNATIONAL PRELIMINARY REPORT  
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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes:	Claims	6-17,20
	No:	Claims	1-5,18,19
Inventive step (IS)	Yes:	Claims	6-17,20
	No:	Claims	1-5,18,19
Industrial applicability (IA)	Yes:	Claims	1-12,16-20
	No:	Claims	-

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

**Box No. VI Certain documents cited**

**1. Certain published documents (Rule 70.10)**

and / or

**2. Non-written disclosures (Rule 70.9)**

**see separate sheet**

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**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

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**Re Item III**

The subject-matter of claims 13-15 is related to subject-matter considered to be covered by the provisions of Rule 67.1 (iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4) (a) (I) PCT).

For the assessment of the present claims 13-15 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Claims 1-12 and 16-17 are considered industrially applicable.

**Re Item V**

Reference is made to the following documents; unless otherwise indicated, reference is made to the relevant passages emphasized in the Search Report.

D1: PICCIONI ET AL: "Experimental study on some properties of N-carbethoxy-4-thiazolidine" RIVISTA ITALIANA DI BIOLOGIA E MEDICINA, vol. 11, no. 3-4, 1991, pages 123-127, XP001205351

**1. Novelty**

D1 discloses a pharmaceutical composition comprising telmesteine (SPA-PU 795 = N-carbetossi-4-tiazolidin carbosillico = N-carbethoxy-4-thiazolidin carboxylic acid) in a phosphate-buffer.

- A phosphate buffer is a pharmaceutically acceptable carrier.
- The composition is suitable for topical administration.
- A lotion is a liquid preparation for external cosmetical or pharmaceutical use.
- A surfactant is a compound showing an activity at the surface of a liquid when dissolved in said liquid. Phosphate is therefore considered to be a surfactant.
- A shampoo is a composition suitable to wash hair.

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REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

International application No.

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- The composition of D1 discloses neither proanthrocyanidin nor glycyrrhetic acid.

Thus, all technical features of claims 1-5 and 18-19 are disclosed in D1. These claims therefore lack novelty under Art. 33(2) PCT.

Remaining claims 6-17 and 20 appear to fulfill the criteria of Art. 33(2) PCT.

**2. Inventive step**

D1 does not disclose or fairly suggest the use of telmesteine for the preparation of a topical medicament for treating dermatological diseases.

Thus, claims 6-17 and 20 are considered inventive under Art. 33(3) PCT.

**Re Item VI**

The following document could become relevant in some contracting states after entering the national/regional phase(s):

D2: WO 03/084553 A (SINCLAIR PHARMACEUTICALS LIMITED;  
MASTRODONATO, MARCO; CIATTINI, ROBER) 16 October 2003 (2003-10-  
16)